

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA**

7
8 AARON SPERSKE,

9 Plaintiff,

10 v.

11 ARIEL ROSENBERG a/k/a ARIEL PINK
12 et al.,

13 Defendants.

14 Case No. 2:12-cv-07034-ODW(JCx)

15 **ORDER DENYING DEFENDANT'S**
16 **MOTION FOR RELIEF FROM**
17 **DEFAULT JUDGMENT [39]**

18 The Court is in receipt of Defendant Ariel Rosenberg's Motion for Relief from
19 Default Judgment under Federal Rule of Civil Procedure 60(b). (ECF No. 39.) For
20 the reasons discussed below, the Court **DENIES** Rosenberg's Motion.

21 Plaintiff Aaron Sperske filed a complaint against Defendants Rosenberg,
22 Kwang Nam Koh, Kenneth John Gilmore, and Ariel Pink's Haunted Graffiti
23 ("APHG") on August 15, 2012, for declaratory relief and accounting under the
24 Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*; declaratory relief under the California
25 Uniform Partnership Act of 1994, Cal. Corp. Code §§ 16100–962; an accounting of
26 partnership assets and proceeds; and breach of fiduciary duty. (ECF No. 1.) In this
27 complaint, Sperske alleged that he and Defendants "formed a musical group and
28 entered into an oral partnership agreement under California law, for the purpose of
 carrying on the business of musical performing . . . [as a] recording group" called
 APHG. (Compl. ¶ 9.) Sperske served two copies of this complaint on Rosenberg, one
 for Rosenberg personally and one for Rosenberg in his role as an agent of APGH, on
 August 31, 2012. (ECF Nos. 5, 7; Hirsch Decl. ¶ 3.)

1 After APHG failed to respond to the complaint, Sperske requested the Clerk of
 2 Court to enter default against APHG on September 20, 2012. (ECF No. 13.) The
 3 Clerk subsequently entered default on APHG on September 21, 2012. (ECF No. 16.)
 4 After two orders to show cause for lack of prosecution, Sperske filed a noticed motion
 5 for default judgment against APHG on October 19, 2012. (ECF Nos. 18, 23, 28.) The
 6 Court granted the motion for default judgment on October 23, 2012. (ECF No. 34.)
 7 On November 12, 2012, Rosenberg filed the instant Motion, arguing that default
 8 judgment against APHG is improper because (1) APHG is not a partnership; (2)
 9 APHG was not validly served with the complaint or the motion for entry of default
 10 judgment; and (3) neither Rosenberg nor the other Defendants were given sufficient
 11 time to oppose the motion for entry of default judgment. (ECF No. 36.)

12 The Court disagrees with Rosenberg. A partnership is “the association of two
 13 or more persons to carry on as coowners of a business for profit . . . whether or not the
 14 persons intend to form a partnership.” Cal. Corp. Code § 16202. Despite
 15 Rosenberg’s contention that APHG is simply the name that Rosenberg has used for
 16 his band since 1996, APHG is a partnership. (Mot. 2.) This is supported by
 17 Rosenberg’s own statement in his answer to Sperske’s complaint: “[Rosenberg]
 18 admits that [he], [Sperske], Koh, Gilmore, and Cole M. Greif-Neill formed a musical
 19 group in or about 2008.” (Rosenberg Answer ¶ 9.) This is enough to form a
 20 partnership, especially since these parties collectively signed a multi-album recording
 21 contract as APHG in 2009. (Rosenberg Decl. ¶ 4.) Rosenberg may have started
 22 APHG in 1996 and thought of himself as the sole “owner” of the band, but if this was
 23 true, Rosenberg would have signed the recording contract by himself. (*Id.* ¶ 2.)

24 Since APHG was a partnership, it was validly served with the complaint when
 25 Rosenberg received two copies of the document. Since Rosenberg was a partner in
 26 APHG, he was also APHG’s agent. *See* Cal. Corp. Code § 16301(1) (“Each partner is
 27 an agent of the partnership for the purpose of its business.”)

28 ///

As for the alleged deficient service of the motion for entry of default judgment, the Court finds that service was proper. APHG's own neglect in responding to Sperske's complaint and defending itself in this action validly gave rise to the default judgment. This neglect is not excusable. “[E]xcusable neglect” contemplates “negligence, carelessness and inadvertent mistake.” *Bateman v. U.S. Postal Service*, 231 F.3d 1220, 1224 (9th Cir. 2000) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 381 (1993)). Determining whether neglect is excusable requires consideration of four factors: (1) the danger of prejudice to the opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted in good faith. *Bateman*, 231 F.3d at 1223–24. Since APHG was served with the complaint on August 31, 2012, it had ample time to respond to Sperske's allegations and oppose any filed motions. Because of APHG's lengthy and unjustified absence, the Court granted Sperske's motion for default judgment. There is no reason why this default judgment should be vacated.

16 And finally, even if the Court were to agree with Rosenberg's assertion that
17 APHG is not a valid partnership, Rosenberg would have no standing to bring this
18 current Motion before the Court. The default judgment was entered against APHG,
19 not Rosenberg personally. If APHG is not a valid partnership, then Rosenberg is not
20 its agent and cannot speak on its behalf.

21 Accordingly, Rosenberg's Motion is hereby **DENIED**.

22 || IT IS SO ORDERED.

23 December 6, 2012

**OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE**